

FIRST REGULAR SESSION

HOUSE BILL NO. 1170

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HUDSON.

2290H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.160, 210.830, 211.211, and 211.462, RSMo, and to enact in lieu thereof four new sections relating to the appointing of certain persons in court proceedings.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.160, 210.830, 211.211, and 211.462, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 210.160, 210.830, 211.211, and 211.462, to read as follows:

210.160. 1. **All children subject to court proceedings involving allegations of child abuse or neglect shall be appointed counsel for as long as the court has jurisdiction.**

2. In every case involving an abused or neglected child which results in a judicial proceeding, the judge ~~[shall]~~ **may** appoint a guardian ad litem to appear for and represent:

(1) A child who is the subject of proceedings pursuant to sections 210.110 to 210.165 except proceedings under subsection 6 of section 210.152, sections 210.700 to 210.760, sections 211.442 to 211.487, or sections 453.005 to 453.170, or proceedings to determine custody or visitation rights under sections 452.375 to 452.410; or

(2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under sections 210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, or sections 453.005 to 453.170.

~~[2-]~~ 3. The judge, either sua sponte or upon motion of a party, may appoint a guardian ad litem to appear for and represent an abused or neglected child involved in proceedings arising under subsection 6 of section 210.152.

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 ~~[3-]~~ 4. The guardian ad litem shall be provided with all reports relevant to the case
17 made to or by any agency or person, shall have access to all records of such agencies or
18 persons relating to the child or such child's family members or placements of the child, and
19 upon appointment by the court to a case, shall be informed of and have the right to attend any
20 and all family support team meetings involving the child. Employees of the division, officers
21 of the court, and employees of any agency involved shall fully inform the guardian ad litem of
22 all aspects of the case of which they have knowledge or belief.

23 ~~[4-]~~ 5. The appointing judge shall require the guardian ad litem to faithfully discharge
24 such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad
25 litem and appoint another. The appointing judge shall have the authority to examine the
26 general and criminal background of persons appointed as guardians ad litem, including
27 utilization of the family care safety registry and access line pursuant to sections 210.900 to
28 210.937, to ensure the safety and welfare of the children such persons are appointed to
29 represent. The judge in making appointments pursuant to this section shall give preference to
30 persons who served as guardian ad litem for the child in the earlier proceeding, unless there is
31 a reason on the record for not giving such preference.

32 ~~[5-]~~ 6. The guardian ad litem may be awarded a reasonable fee for such services to be
33 set by the court. The court, in its discretion, may award such fees as a judgment to be paid by
34 any party to the proceedings or from public funds. However, no fees as a judgment shall be
35 taxed against a party or parties who have not been found to have abused or neglected a child
36 or children. Such an award of guardian fees shall constitute a final judgment in favor of the
37 guardian ad litem. Such final judgment shall be enforceable against the parties in accordance
38 with chapter 513.

39 ~~[6-]~~ 7. The court may designate volunteer advocates, who may or may not be
40 attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties
41 for the court. Nonattorney volunteer advocates shall not provide legal representation. The
42 court shall have the authority to examine the general and criminal background of persons
43 designated as volunteer advocates, including utilization of the family care safety registry and
44 access line pursuant to sections 210.900 to 210.937, to ensure the safety and welfare of the
45 children such persons are designated to represent. The volunteer advocate shall be provided
46 with all reports relevant to the case made to or by any agency or person, shall have access to
47 all records of such agencies or persons relating to the child or such child's family members or
48 placements of the child, and upon designation by the court to a case, shall be informed of and
49 have the right to attend any and all family support team meetings involving the child. Any
50 such designated person shall receive no compensation from public funds. This shall not
51 preclude reimbursement for reasonable expenses.

52 ~~[7-]~~ **8.** Any person appointed to perform guardian ad litem duties shall have
53 completed a training program in permanency planning and shall advocate for timely court
54 hearings whenever possible to attain permanency for a child as expeditiously as possible to
55 reduce the effects that prolonged foster care may have on a child. A nonattorney volunteer
56 advocate shall have access to a court appointed attorney guardian ad litem should the
57 circumstances of the particular case so require.

210.830. The child shall be made a party to any action commenced under sections
2 210.817 to 210.852. If he or she is a minor, he or she may be represented by a next friend
3 appointed for him or her for any such action. The child's mother or father or the family
4 support division or any person having physical or legal custody of the child may represent
5 him or her as his or her next friend. **Counsel shall be appointed and** a guardian ad litem
6 ~~[shall]~~ **may** be appointed for the child only if child abuse or neglect is alleged, or if the child
7 is named as a defendant, or if the court determines that the interests of the child and his or her
8 next friend are in conflict. The natural mother, each man presumed to be the father under
9 section 210.822, and each man alleged to be the natural father, shall be made parties or, if not
10 subject to the jurisdiction of the court, shall be given notice of the action in a manner
11 prescribed by the court and an opportunity to be heard. The court may align the parties.

211.211. 1. ~~[A child is entitled to be represented by counsel in all proceedings under
2 subdivision (2) or (3) of subsection 1 of section 211.031 and by a guardian ad litem in all
3 proceedings under subdivision (1) of subsection 1 of section 211.031.~~

4 ~~2-]~~ **(1)** The court shall appoint counsel for a child ~~[prior to the filing of a petition if a
5 request is made therefor to the court and the court finds that the child is the subject of a
6 juvenile court proceeding and that the child making the request is indigent]~~ **in a delinquency,
7 child abuse or neglect, or termination of parental rights proceeding that is conducted
8 under this chapter. Counsel shall be appointed before the first hearing and shall
9 represent the child at all stages of the proceeding and, in a protective custody
10 proceeding, through permanency, including appeal. The child and the child's parent or
11 guardian shall not be represented by the same counsel.**

12 ~~[3- (1) When a petition has been filed under subdivision (2) or (3) of subsection 1 of
13 section 211.031, the court may appoint counsel for the child except if private counsel has
14 entered his or her appearance on behalf of the child or if counsel has been waived in
15 accordance with law; except that, counsel shall not be waived for any proceeding specified
16 under subsection 10 of this section unless the child has had the opportunity to meaningfully
17 consult with counsel and the court has conducted a hearing on the record.]~~

18 **(2) If a parent or guardian is found to be indigent and entitled to counsel, the
19 juvenile court shall appoint counsel unless counsel is knowingly, intelligently, and
20 voluntarily waived.**

21 (3) If ~~[a child waives his or her right to]~~ counsel **is waived**, such waiver shall be made
22 in open court and be recorded and in writing and shall be made knowingly, intelligently, and
23 voluntarily. In determining whether ~~[a child has]~~ **counsel is** knowingly, intelligently, and
24 voluntarily waived ~~[his or her right to counsel]~~, the court shall look to the totality of the
25 circumstances ~~[including, but not limited to, the child's age, intelligence, background, and~~
26 ~~experience generally and in the court system specifically; the child's emotional stability; and~~
27 ~~the complexity of the proceedings]~~.

28 ~~[4.]~~ 2. When a petition has been filed and the child's custodian appears before the
29 court without counsel, the court shall appoint counsel for the custodian if it finds:

30 (1) That the custodian is indigent; and

31 (2) That the custodian desires the appointment of counsel; and

32 (3) That a full and fair hearing requires appointment of counsel for the custodian.

33 ~~[5.]~~ 3. Counsel shall be allowed a reasonable time in which to prepare to represent his
34 client.

35 ~~[6.]~~ 4. Counsel shall serve for all stages of the proceedings, including appeal, unless
36 relieved by the court for good cause shown. If no appeal is taken, services of counsel are
37 terminated following the entry of an order of disposition.

38 ~~[7. The child and his custodian may be represented by the same counsel except where~~
39 ~~a conflict of interest exists. Where it appears to the court that a conflict exists, it shall order~~
40 ~~that the child and his custodian be represented by separate counsel, and it shall appoint~~
41 ~~counsel if required by subsection 3 or 4 of this section.~~

42 ~~8. When a petition has been filed, a child may waive his or her right to counsel only~~
43 ~~with the approval of the court and if such waiver is not prohibited under subsection 10 of this~~
44 ~~section. If a child waives his or her right to counsel for any proceeding except proceedings~~
45 ~~under subsection 10 of this section, the waiver shall only apply to that proceeding. In any~~
46 ~~subsequent proceeding, the child shall be informed of his or her right to counsel.~~

47 9.] 5. Waiver of counsel ~~[by a child]~~ may be withdrawn at any stage of the
48 proceeding, in which event the court shall appoint counsel ~~[for the child if]~~ as required by
49 ~~[subsection 3 of]~~ this section.

50 ~~[10.]~~ 6. A child's right to be represented by counsel shall not be waived in any of the
51 following proceedings:

52 (1) At any contested detention hearing under Missouri supreme court rule 127.08
53 where the petitioner alleges that the child violated any law that, if committed by an adult,
54 would be a felony unless an agreement is otherwise reached;

55 (2) At a certification hearing under section 211.071 or a dismissal hearing under
56 Missouri supreme court rule 129.04;

57 (3) At an adjudication hearing under Missouri supreme court rule 128.02 for any
58 felony offense or at any detention hearing arising from a misdemeanor or felony motion to
59 modify or revoke, including the acceptance of an admission;

60 (4) At a dispositional hearing under Missouri supreme court rule 128.03; ~~or~~

61 (5) At a hearing on a motion to modify or revoke supervision under subdivision (2) or
62 (3) of subsection 1 of section 211.031; **or**

63 **(6) At a hearing that the court has appointed counsel for a child under**
64 **subdivision (1) of subsection 1 of this section.**

65 **7. In all juvenile proceedings in which the protective custody petition includes an**
66 **allegation that the child is abused or neglected, the court may appoint a guardian ad**
67 **litem to protect the child's best interest. The guardian ad litem shall not be the child's**
68 **counsel.**

69 **8. The Missouri supreme court shall establish standards of practice for counsel**
70 **and guardians ad litem who are appointed under this section within six months of**
71 **August 28, 2023.**

72 **9. Annually, the Missouri office of state courts administrator shall make**
73 **available aggregate data on the number of children who have been appointed counsel**
74 **under this section.**

211.462. 1. In all actions to terminate parental rights, ~~[if not previously appointed~~
2 ~~pursuant to section 210.160,]~~ **counsel shall be appointed, as provided in section 211.211,**
3 **and a guardian ad litem [shall] may be appointed, for the child as soon as practicable after the**
4 **filing of the petition.**

5 2. The parent or guardian of the person of the child shall be notified of the right to
6 have counsel, and if they request counsel and are financially unable to employ counsel,
7 counsel shall be appointed by the court. Notice of this provision shall be contained in the
8 summons. When the parent is a minor or incompetent the court shall appoint a guardian ad
9 litem to represent such parent.

10 3. The guardian ad litem shall, during all stages of the proceedings:

11 (1) Be the legal representative ~~[of the child]~~ **for the child's best interests**, and may
12 examine, cross-examine, subpoena witnesses and offer testimony. The guardian ad litem may
13 also initiate an appeal of any disposition that he **or she** determines to be adverse to the best
14 interests of the child;

15 (2) Be an advocate for the ~~[child]~~ **child's best interests** during the dispositional
16 hearing and aid in securing a permanent placement plan for the child. To ascertain the child's
17 wishes, feelings, attachments, and attitudes, he **or she** shall conduct all necessary interviews
18 with persons, other than the parent, having contact with or knowledge of the child and, if
19 appropriate, with the child;

20 (3) Protect the rights, interest and welfare of a minor or incompetent parent by
21 exercising the powers and duties enumerated in subdivisions (1) and (2) of this subsection.

22 4. Court costs shall be paid by the county in which the proceeding is instituted, except
23 that the court may require the agency or person having or receiving legal or actual custody to
24 pay the costs.

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